

**Regulatory Advisory Panel Meeting
Virginia Agricultural Resource Management Plan Regulations
Patrick Henry Building
Richmond, Virginia
Tuesday, February 14, 2012**

Regulatory Advisory Panel Members Present

R.O. Britt, Murphy Brown
Katie Frazier, VGPA
Travis Hill, Deputy Secretary of Agriculture and Forestry
Emily Horsley, FSA
Brad Jarvis, Virginia Cooperative Extension
Ann Jennings, Chesapeake Bay Foundation
Donna Johnson, VAC
Jeff Miller, VNLA
Anthony Moore, Deputy Secretary of Natural Resources
Jacob Powell, VCN
Wilmer Stoneman, Virginia Farm Bureau Federation
Bill Street, James River Association
Jim Tate, Hanover-Caroline SWCD
Meaghann Terrien, TRSWCD
Donald L. Wells, VASWCD
Chad Wentz, NRCS
Charles Wooten, Piedmont SWCD
Neil Zahradka, DEQ

Agency Staff Present

Diane Beyer, DCR	James Davis-Martin, DCR
Dave Dowling, DCR	Michael Fletcher, DCR
Michael Foreman, DCR	Mark Hollberg, DCR
Darrell Marshall, VDACS	Stephanie Martin, DCR
Mark Meador, DCR	Reese Peck, DCR
Ginny Snead, DCR	Bob Waring, DCR
Elizabeth Andrews, Office of the Attorney General	

Others Present

Blaine Delaney, NRCS
Adrienne Kotula, JRA
Jack Frye, Chesapeake Bay Commission
Jack Bricker, NRCS
Ken Carter, VASWCD

Welcome and Introductions

Ms. Martin welcomed attendees and asked members and attendees to introduce themselves.

Next Steps

Mr. Dowling reviewed the next steps in the process.

Steps leading up to Board Meeting

- 1) February 14th, RMP Regulatory Advisory Panel meeting – discuss refinements to the draft proposed regulation.
- 2) February 22nd, Circulate updated regulation to RAP for review and comment; request any thoughts regarding economic impact analysis.
- 3) February 29th, Comments from RAP due to Department on regulation.
- 4) DCR will prepare proposed Board regulation and confer with Administration.
- 5) March 15th, Mail RMP proposed regulations and supporting regulatory materials to Board; copy RAP.
- 6) March 29th, Virginia Soil and Water Conservation Board will consider a “Motion to approve, authorize and direct the filing of proposed regulations.”

Following affirmative VSWCB action on March 29th, the timeline may then involve:

- 7) April 1st, Information on economic impact analysis from RAP members due to Department.
- 8) April – Department will complete development of required regulatory forms and analyses and post to the Regulatory TownHall initiating DPB 45-day review.
- 9) Mid June, DPB completes economic analysis.
- 10) DCR responds to analysis and with agreement of Administration submits the proposed regulation to the Virginia Register of Regulations for publication (Target submittal for June 27th noon).
- 11) July 16th – September 14th, if above target dates are met, the proposed regulations would be published on July 16th in Volume 28: Issue 23 initiating a 60-day public comment period.
- 12) Early August, At least one public hearing will be held.
- 13) September – October, DCR will analysis comments received, prepare comment summary/response, develop final regulation, and confer with the Administration.
- 14) Mid November, recommend final regulation is mailed to Board with supporting documentation.
- 15) Early December, Virginia Soil and Water Conservation Board will consider a “Motion to approve, authorize and direct the filing of a final regulation.”
- 16) January, 2013, DCR will likely file a final exempt action for publication in the Virginia Register of Regulations (Target January 9th submittal, January 28th publication).

17) “Such regulation shall become effective 15 days after publication in the Virginia Register of Regulations...” (February 12th, Volume 29: Issue 11).

Ms. Jennings said that there had been previous discussion about running the list of BMPs in the draft regulations through a model scenario. She asked when that would happen.

Mr. Dowling said that some of that had been done. He said that the hope would be to have something together for the Board’s consideration.

Mr. Davis-Martin said that DCR was still working with EPA to get nutrient management into the model. Nutrient management is one of the key scenarios. He said that a scenario could not be effectively run through the model until the nutrient management plan is in place.

Consideration of recommendations

Mr. Meador reviewed the comments that had been received since the previous meeting. He distributed copies of four emails received from committee members. Copies of those emails are available from DCR.

Mr. Street said that he wanted to make sure the goal remained to achieve water quality and get more conservation on the ground. The goal should not be enrollment.

Mr. Wells said that on line 54 he would like for district directors and associate directors to be encouraged to participate in the technical review committee. He said that he would also suggest changing the word “personnel” to “staff.”

Mr. Street said that a number of the comments from the email submitted by Mr. Wentz referenced NRCS programs. He suggested that specific reference to programs might be more appropriate in policy or guidance as opposed to regulations.

Mr. Dowling said that there were several ways to address this. He said that typically programs that could change should not be incorporated into the regulations.

It was suggested that the phrase “meets qualifications approved by the Board” be incorporated.

Ms. Jennings said that it is important to hold the plan writer to a high standard.

Ms. Frazier suggested that the language state that the standards for planners shall be that required to be a planner by USDA and NRCS.

Mr. Dowling said that this probably needed review by the Office of the Attorney General.

Mr. Moore said that he would recommend not referencing NRCS. He said that this is a state program and that the federal government could not be forced to participate.

Mr. Stoneman noted that the language says “may” and does not require NRCS involvement.

Mr. Meador suggested that the language say “at the discretion of.”

Mr. Wentz said that NRCS standards are always under review. He said that the NRCS cover crop standard is different than the DCR standard.

Mr. Meador said that while the recommendation to meet T may be a cover crop and may meet NRCS standards it would not be a reportable practice according to DCR standards and would not receive credit.

Mr. Street said that it would be important to note that if the assessment found that a certain practice didn’t work for a farmer that the farmer should still try to achieve the same standard by other means.

Mr. Meador said that the statute says the plan achieves a maximum soil loss plan of T.

Mr. Street said that the model doesn’t recognize T, but recognizes the practices to get to T.

It was suggested that the language in lines 152-161 be dropped and that the language in 149-151 be reinstated.

Review of the Draft

Mr. Foreman led a review of the February 1, 2012 draft of the regulations.

Mr. Foreman asked if there were comments regarding pages 1, 2 and 3.

Mr. Stoneman asked if a set of BMPs was listed what would be done when there is a new or revised TMDL. Would the Board need to review the regulations?

It was suggested that the specifics for the BMP be taken directly from the Code section.

Mr. Street said that the statute says the regulations should include practices sufficient to meet the Bay TMDL or other local TMDLs. He said if other local TMDLs included other practices the structure did not accommodate that.

Ms. Jennings asked on Page 4 if the condition of the land should be specified.

Page 5

Ms. Jennings suggested on lines, 204, 205 and 208 “will” be changed to “shall.”

On line 206 a member asked how the 30 day requirement was decided. The member asked what happened if notification was not given in 30 days.

Page 6

Mr. Street suggested on line 270 that the plan in writing be copied to the District.

Mr. Stoneman noted that there is a relationship between the developer and the planner that should remain confidential.

Page 7

Ms. Jennings said the draft had been written so that the resource management plan or certificate would not be reopened if there is a revised TMDL. She asked what action the Board would take if there was a new TMDL or revised watershed implementation plan.

Page 8

On line 331 Mr. Stoneman questioned the need for a plan written by a Soil and Water Conservation District to be reviewed by DCR.

Ms. Frazier asked on line 321 F how a developer would know who the new owner or operator is.

Mr. Dowling said that the concept was trying to keep the RMP alive from person to person.

Ms. Frazier said this would be more appropriate in guidance.

Page 9

Ms. Jennings said that on line 405 she would prefer to see “may” instead of “shall.”

Page 10

Ms. Jennings noted a concern with the once every three year inspection.

Mr. Hill asked about the section beginning on line 428.

Mr. Dowling said that section was being reviewed by the Office of the Attorney General.

On line 413, Mr. Street expressed concern regarding the 9 year life of the certificate. He said that plans approved in 2016 will run 9 years and the revised WIP would be out in 2017. He said this could mean falling short of the 2025 goal.

Page 11

A member said that if the owner or operator was not maintaining the RMP there should be a process for revocation of the certificate.

Page 12

Mr. Street suggested a time frame be established for periodic reviews.

At this time the committee recessed for lunch.

Following lunch, Mr. Foreman resumed the discussion.

Mr. Stoneman suggested that DCR take the areas of concern noted and incorporate those into the next draft.

Mr. Foreman suggested the group review the incentives.

Ms. Johnson asked if the incentives would be in the regulations.

Mr. Meador said that the thought was that it would be possible to put something in the regulations that gives an added bonus to adopters.

Ms. Johnson asked how time sensitive the discussion of incentives was vs. getting the regulations out.

Mr. Dowling said that the incentives were a valuable discussion to have working towards implementation. He asked what members thought about including the incentives in the regulation.

Mr. Wells said that he did not think the incentives should be in the regulation. He said the policies of the department will have to govern what incentives may be available. He said that may be based on the budget.

Mr. Foreman asked members of the RAP to list incentives before moving on to other areas of concern. He said that the discussion of inclusion in the regulations could occur at a later point.

The committee identified the following in terms of incentives:

- Trading program
- Green label
- Insurance plan reductions
- Financial – cost share advantage
- Litigation
- Innovative Technology
- Hire plan writer

Mr. Street said that it would be beneficial to have a more in depth discussion regarding incentives once the regulations are finalized.

Mr. Foreman said that the remainder of the day would be discussing issues of concern. He said that it would be helpful to note what issues DCR could address as opposed to those that needed further panel discussion.

The following comments were made:

- Lines 65-70 should track closer to the statute.
- The question of how the Board adjusts to a new TMDL should be addressed.
- Lines 79-80 Strike the nutrient trading portion.
- Lines 86-89 refer to Section 104.6.

Mr. Dowling said this addressed applicable water quality requirements. He said that was more inclusive than the strict TMDL statement.

- Line 173 add the phrase “and other erosion issues.”
- Line 206 change 30 days to 60 days.
- Line 270 strike the recommendation to copy the district on correspondence.
- Line 258 should read “included but not limited to.”
- Line 331 remove the requirement that the plan be reviewed by DCR.

Mr. Stoneman said that review would be done later in the process.

Mr. Street said that there should be a separation from the person writing and reviewing the plan.

- Line 321 This sentence is not needed in the regulation.

- Lines 341-344 and 359-361 include the reference from line 377.
- Line 340 Plan should be reviewed and a response given within 45 days.

Mr. Britt said that if there is not ending point there can be no grievance.

- Line 390 the authority should be reviewed.
- Line 434 It was suggested that the farmer be required to write DCR annually.
- Lines 428-432 This is being reviewed by the Office of the Attorney General.
- Line 414 should be reviewed for consistency.
- Line 413 the nine years provision should be reviewed.
- Line 444 Clarify the meaning of “creditable.”
- Line 470-471 the suggested time was 30 days.
- Lines 529-531 DCR will review to make sure personal information is not captured.

Final comments

Ms. Martin said that the aim was to address the comments and get the next draft out to the committee by February 22. The draft will be mailed to the Board on March 15.

Ms. Martin asked if there was a need to meet again before March 15. Consensus was that staff would move ahead with recommendations and forward to the RAP for comments.

Ms. Jennings suggested that the RAP convene following the Board meeting and public comment period to review the comments.

There was no further business and the meeting was adjourned.